

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEMETRIUS YARBOROUGH, a/k/a Tu-Tu,

Defendant.

Case No. 1:15-cr-143
(LJV)

March 18, 2019

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

JAMES P. KENNEDY, JR.
UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
Assistant United States Attorney
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202
For the Plaintiff

ADDELMAN LAW, PLLC
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For the Defendant

PROBATION:

TINA E. BLACKMAN, USPO

DEPUTY CLERK:

COLLEEN M. DEMMA

COURT REPORTER:

ANN M. SAWYER, FCRR, RPR, CRR,
NYRCR, NYACR, Notary Public
Robert H. Jackson Courthouse
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1 (Proceedings commenced at 12:37 p.m.)

2 THE CLERK: All rise. United States District Court
3 for the Western District of New York is now in session, the
4 Honorable Lawrence J. Vilardo presiding.

5 THE COURT: Please be seated.

6 THE CLERK: 15-CR-143, United States of America
7 versus Demetrius Yarborough.

8 Assistant United States Attorney Joseph M. Tripi
9 appearing on behalf of the government.

10 Attorney David R. Addelman appearing with defendant.
11 Defendant is present.

12 Also present is United States Probation Officer
13 Tina E. Blackman appearing for United States Probation Officer
14 Matthew G. Zenger.

15 This is the date set for sentencing.

16 THE COURT: Good afternoon, everyone.

17 MR. TRIPI: Good afternoon, Your Honor.

18 MR. ADDELMAN: Good afternoon, Your Honor.

19 THE COURT: Mr. Yarborough is before the Court for
20 sentencing on his previous plea of guilty to Count 1 of
21 the superseding information, and that charged that he
22 possessed 500 grams or more of cocaine with the intent to
23 distribute it and did distribute it in violation of 21, United
24 States Code, Sections 841(a)(1) and 841(b)(1)(B).

25 We're going to begin with some questions that I have

1 for the lawyers and for you, Mr. Yarborough, about the
2 presentence investigation report. I'm then going to make sure
3 that I've received and read all the sentencing-related
4 submissions. After that I'm going to make some findings of
5 fact and calculate the applicable guidelines range. And then
6 before I state the sentence, I'm going to give the lawyers and
7 you an opportunity to talk to me about anything you think is
8 relevant to sentencing.

9 So are there any questions before we begin from the
10 government?

11 MR. TRIPI: No, Your Honor.

12 THE COURT: From the defense?

13 MR. ADDELMAN: No, Judge.

14 THE COURT: Mr. Addelman, have you had enough time to
15 read the presentence report that was prepared on January 28th,
16 2019 and to review it with your client?

17 MR. ADDELMAN: I have.

18 THE COURT: And Ms. Blackman, there were no revisions
19 after January 28th; is that right?

20 USPO BLACKMAN: That's correct, Your Honor.

21 THE COURT: Mr. Addelman, did you explain the
22 contents of the report to your client?

23 MR. ADDELMAN: I have.

24 THE COURT: Do you have any concerns about his
25 ability to understand it?

1 MR. ADDELMAN: No, I don't.

2 THE COURT: Mr. Yarborough, did you receive a copy of
3 the presentence report that was prepared on January 28th,
4 2019?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did your attorney explain it to you?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand it?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you need any more time to review it or
11 to talk to Mr. Addelman about it?

12 THE DEFENDANT: No.

13 THE COURT: Do you have any questions about it?

14 THE DEFENDANT: No.

15 THE COURT: Mr. Addelman, the defendant did not file
16 a statement with respect to sentencing factors, per se, but in
17 your sentencing memorandum you note that the defendant
18 reportedly received heroin from Mr. Gillon, but you contest
19 that he sold heroin. Other than that, does the defendant want
20 to contest or change anything in the presentence report?

21 MR. ADDELMAN: No, Judge. And I apologize for not
22 including that paragraph that we don't contest. We don't
23 contest the fact that it was reported. We do contest that --
24 the truth of that report.

25 THE COURT: Okay. Yes. And we're going to get to

1 that in a -- in a second.

2 So you really don't contest anything that's in the
3 report, you just -- you just have an observation about
4 something that is included in it, and you disagree with what
5 was reported?

6 MR. ADDELMAN: We don't think that that allegation
7 would have been found credible had we gone to trial, but --

8 THE COURT: Right.

9 MR. ADDELMAN: -- we don't doubt --

10 THE COURT: That it would --

11 MR. ADDELMAN: -- that it was reported.

12 THE COURT: Okay. Great. Terrific. Good. So
13 you're not asking me to change anything in the report?

14 MR. ADDELMAN: No.

15 THE COURT: Great. And -- and so with respect to
16 everything in the presentence report, am I correct that you
17 don't want to contest or change any of the facts or any of the
18 sentencing guidelines calculations; is that correct?

19 MR. ADDELMAN: Correct.

20 THE COURT: Okay. Mr. Yarborough, do you want to
21 contest or change anything in the report?

22 THE DEFENDANT: No.

23 THE COURT: And does the government want to contest
24 or change anything in the report?

25 MR. TRIPI: No, Your Honor. The presentence

1 calculated a lower guideline than did the plea agreement, and
2 we filed the no-objection statement accordingly.

3 THE COURT: Yep. And that includes both the facts
4 and the guidelines calculation; is that right?

5 MR. TRIPI: That's correct, Judge.

6 THE COURT: Okay. Mr. Addelman, I've received and
7 reviewed the defendant's sentencing memorandum; is that
8 everything?

9 MR. ADDELMAN: Yes, Judge.

10 THE COURT: And is there anything else you would like
11 to submit in writing today?

12 MR. ADDELMAN: No.

13 THE COURT: Mr. Tripi, I've received the government's
14 statement with respect to sentencing factors and the
15 government's amended and superseding statement with respect to
16 sentencing factors; is that everything?

17 MR. TRIPI: Yes, Judge.

18 THE COURT: And does the government want to submit
19 anything else in writing?

20 MR. TRIPI: No, Your Honor.

21 THE COURT: Mr. Addelman, I've reviewed the
22 sentencing memorandum and particularly page 3 which addresses
23 your concerns about paragraph 24, and as you correctly
24 observed and as 18, United States Code, Section 3661
25 indicates, there's no limitation on the background information

1 that I'm to receive and consider regarding character, conduct
2 of the person in front of me, and the like.

3 And, so, with respect to the 11(c)(1)(C) plea that
4 you've negotiated on behalf of your client and with respect to
5 the sentencing today, I'm considering only the conduct to
6 which the defendant pleaded guilty and for which he's accepted
7 responsibility, and that involves the 3.5 kilograms of
8 cocaine, or -- or the amount was between 2 and 3.5 kilograms
9 of cocaine.

10 I think it was actually 3 -- 3 kilos; is that -- is
11 that correct? The wrappings indicated 3 kilos; is that right?

12 MR. ADDELMAN: The government concluded that the
13 wrapping would have been consistent with 3 kilograms. There
14 was no actual cocaine, just cocaine residue --

15 THE COURT: Right, on the wrapper.

16 MR. ADDELMAN: -- on the wrapping itself.

17 THE COURT: Right. And you've agreed that between 2
18 and 3.5 is what's involved?

19 MR. ADDELMAN: We have.

20 THE COURT: Yeah. And so based on that, that's what
21 I'm going to consider, I see no need for a hearing. It sounds
22 to me like you agree with that; is that right?

23 MR. ADDELMAN: I do.

24 THE COURT: Okay. And, Mr. Tripi, anything you would
25 like to add?

1 MR. TRIPI: No, Your Honor.

2 THE COURT: Okay. I previously accepted the
3 defendant's plea of guilty to Count 1 of the superseding
4 information, possession with intent to distribute 500 grams or
5 more of cocaine.

6 I note that in the plea agreement, the government and
7 the defendant have agreed pursuant to 11(c)(1)(C) of the
8 Federal Rules of Criminal Procedure that at the time of the
9 sentence I would impose a term of imprisonment of between 60
10 and 90 months. The agreement also provided that if after I
11 reviewed the presentence report I rejected the plea agreement,
12 that the defendant and the government would have the
13 opportunity to -- to back out of that agreement, and the
14 defendant would have an opportunity to withdraw his plea.

15 I've deferred acceptance of the plea agreement, but
16 pursuant to 11(c)(4), I now accept the terms and the
17 conditions of the plea agreement that was signed on
18 October 29th, 2018, and my judgment and my sentence will be
19 consistent with it.

20 In that plea agreement, the government also agreed to
21 move to dismiss the open count of the second superseding
22 indictment against this defendant. So I also make a charge --
23 I also make a finding that the charge to which the defendant
24 pled guilty, that is Count 1 of the superseding information,
25 adequately reflects the seriousness of the actual offense

1 behavior and that accepting the agreement will not undermine
2 the purposes of sentencing or the guidelines.

3 The defendant was initially charged in a large-scale
4 narcotics conspiracy with 15 other defendants, but the crime
5 to which the defendant pleaded guilty takes into account his
6 actual criminal conduct and the drugs attributable to him
7 following the execution of a search warrant at 22 Carl Street.

8 And so I believe that the plea of guilty and the plea
9 agreement adequately reflect the actual offense behavior, and
10 that accepting the agreement will not undermine the statutory
11 purposes of sentencing or the guidelines.

12 The government has filed an amended and superseding
13 statement with respect to sentencing factors accepting the
14 probation and pretrial service office's presentence report.
15 The defendant has indicated his acceptance on the record
16 today.

17 Based on the parties' submissions and representations
18 today in court, there are no disputes regarding the facts
19 contained in the presentence investigation report other than
20 the -- the objection to the, for want of a better term, to the
21 characterization in the report about what was reported and
22 whether -- and the accuracy of what was reported which does
23 not need to be resolved.

24 I also have reviewed that report. Based on my
25 review, based on the parties' written submissions and based on

1 the positions taken on the record today, especially
2 Mr. Addelman's position on behalf of the defendant that he
3 does not contest the way the report is worded, that was
4 actually reported to the probation officer that that occurred.
5 I adopt the facts in the report as my findings of fact, and I
6 incorporate them into the record.

7 So I will now place the January 28th, 2019
8 presentence investigation report in the record under seal. If
9 an appeal is filed, counsel on appeal will be given access to
10 the sealed report except that counsel will not be given access
11 to the recommendations section.

12 So let's now turn to the guidelines which I must
13 calculate and consider as an important part of my
14 determination of a sentence. And I apologize to everybody in
15 the courtroom for the technical nature of what's about to
16 follow, but the guidelines themselves and the reasons behind
17 the guidelines make this a necessary step in the process.

18 Based on the parties' submissions and their
19 representations today in court, there are also no disputes
20 regarding the recommendations in the report as to the
21 applicable sections of the Sentencing Commission's advisory
22 guidelines.

23 The presentence investigation report calculates under
24 the 2018 version of the guidelines manual that
25 Section 2D1.1(a)(5) and 2D1.1(c)(7) provide for a base offense

1 level of 26, and that no adjustments for specific offense
2 characteristics apply.

3 The report then recommends that the offense level be
4 decreased by two levels under Section 3E1.1(a) of the
5 guidelines because the defendant has accepted responsibility
6 for his conduct.

7 So based on all that, the presentence report
8 calculates the total offense level to be 24. 26 minus 2
9 is 24.

10 The report then calculates the criminal history
11 category as III based on a criminal history score of 6. Based
12 on my factual findings, I agree with the report's calculation
13 of both the offense level and the criminal history category.

14 So with a total offense level of 24 and a criminal
15 history category of III, the report calculates the applicable
16 guidelines range as a sentence of imprisonment of between 63
17 and 78 months; a fine range of \$10,000 to \$5 million; and a
18 period of supervised release of four to five years. There's
19 also a mandatory special assessment of \$100 that I must
20 impose. I agree with all those calculations in the
21 presentence report, as well.

22 But notwithstanding those calculations, as I stated
23 earlier under Rule 11(c)(1)(C), the parties agree that at the
24 time of sentencing I would impose a term of imprisonment of at
25 least 60 months but no more than 90 months.

1 Mr. Yarborough, under the Supreme Court's decision in
2 United States versus Booker and the 2nd Circuit's decision in
3 United States versus Crosby, the Court must consider the
4 guidelines but it's not bound by them.

5 The Court also must consider the factors that are
6 included in 18, United States Code, Section 3553(a), and those
7 factors include: the nature and circumstances of the offense;
8 your history and your characteristics; the need for the
9 sentence to reflect the seriousness of the offense, to promote
10 respect for the law, and to provide a fair punishment to you;
11 the need to deter others from committing crimes and to protect
12 the public from your crimes; the need to provide you with
13 educational or vocational training in an attempt to
14 rehabilitate you; the types of sentences that are available;
15 any policy statements that are issued by the Sentencing
16 Commission; and sentences given to others who committed crimes
17 similar to the one to which you pleaded guilty.

18 I'm going to take all those factors into account, but
19 before I impose sentence I want to give the lawyers and you an
20 opportunity to talk to me about anything you think is
21 relevant.

22 So we're going to start with the government.
23 Mr. Tripi, does the government want to say anything?

24 MR. TRIPI: Just very briefly, Judge. We ask that
25 the Court impose sentence within the range set forth in the

1 plea agreement which also encompasses the range set forth in
2 the presentence report based on the defendant's lengthy
3 criminal history and his offense conduct in this case.

4 THE COURT: Okay. Thank you. And there are no
5 identifiable victims, correct?

6 MR. TRIPI: That's correct, Judge.

7 THE COURT: And Mr. Addelman.

8 MR. ADDELMAN: Judge, I'd ask that Mr. Yarborough
9 speak first.

10 THE COURT: Sure. Mr. Yarborough, go ahead.

11 THE DEFENDANT: First I want to apologize to the
12 Court because I never thought I was going to be on this side
13 of the table again. I never thought I was going to commit a
14 crime.

15 And I want to apologize to my family and my son and
16 my brother and my big brother over there. I promised them
17 that I never was going to come back to jail, I never was going
18 to be engaged in drugs. And I told them how much that I
19 really disliked the drugs, and I wanted to be a voice to the
20 people and -- to convince them not to use the drugs or sell
21 the drugs. And I backslid. I made a mistake.

22 I thought I was ready when I did all that time when I
23 was incarcerated before, but I backslid. I let the
24 manipulation get to me. I thought people was in my corner
25 that was real close to me, I thought I could trust them, and I

1 was used, and I made a bad decision that I take full
2 responsibility for.

3 What I do, I want to be today, I learned so much that
4 I want to be a voice for the people. I want to help people.

5 Your Honor, when I was a -- when I was a kid, I never
6 expected to be looking like this on this side. I wanted to be
7 a race car driver or a fireman, I never wanted to be no drug
8 dealer. I didn't know nothing about this stuff. I thought it
9 was okay when I was coming up, and I see that it wasn't today.

10 And today, I want to help the people, the people that
11 I hurted, the people who saw the things that I did and liked
12 it. I want to be able to give back to my community and to the
13 people that's all over. I just want to do the right thing,
14 that's the right thing to do for the world.

15 And that's why I stand here today, Your Honor. I
16 want to -- I want to do what's right. I want to help people
17 because that's what I do, I help people. I give good advice,
18 even though I make a mistake. But today, I make no more
19 mistakes.

20 My son, he graduated from college. He's doing very
21 good. He got a degree in accounting. And he don't have no
22 parents. He only got me and my brother and my other brother.
23 He don't have -- he don't have nobody. His mom died when he
24 was young, and I'm all he got. He don't got no grandmother,
25 no grandfather, nothing.

1 I'm asking -- I'm not throwing that away. No more.
2 Enough is enough, Your Honor. That's it, Your Honor.

3 THE COURT: Thank you. Mr. Addelman?

4 MR. ADDELMAN: The sentiments the Court has just
5 heard have been consistently expressed to me during the
6 duration of my representation. I have questioned
7 Mr. Yarborough, because this isn't his first rodeo. And his
8 expressions that he's learned from this, I followed up with a
9 couple of questions.

10 He indicated to me, and I don't know if this was
11 intentional that he didn't raise it now or not, but he said
12 that the opioid crisis has made a difference to him. When he
13 was a younger man making decisions, some of them bad
14 decisions, he wasn't thinking of people dying from this like
15 they are now.

16 Now, obviously, drugs have always been a negative
17 factor in our society and he should have been more attuned to
18 this. But he seems highly sensitized to the problems that
19 drugs are causing in our society.

20 As indicated, he's got a young man that he's
21 responsible for raising who just graduated from ECC with a
22 degree in accounting, and he's very proud of that.

23 He wants to spend whatever time he has left, he's 52
24 years old, not creating problems, but hopefully educating
25 younger people to stay clear of the mistakes that he's made.

1 In this investigation, he was talking kind of loosely
2 about people he trusted. His wife ended up being, we believe,
3 a witness against him. And to my knowledge, she was an
4 unindicted co-conspirator in that she was -- admitted that she
5 was involved and she blamed him for everything.

6 He knowingly committed crimes, and for that he's
7 responsible and he deserves a sentence that's sufficient but
8 not greater than necessary, and we acknowledge that, but a lot
9 of things would have come up had he gone to trial that will
10 not now.

11 In any event, Judge, what I'm getting to is that in
12 sentencing the man that's standing before you, we submit that
13 a 60-month sentence would be sufficient to accomplish the
14 objectives of sentencing, and we would ask the Court to
15 consider that as an appropriate sentence.

16 THE COURT: Okay. Thank you.

17 Do either counsel know of any reason why sentence
18 should not now be imposed?

19 MR. TRIPI: No, Your Honor.

20 MR. ADDELMAN: I do not.

21 THE COURT: Okay. Pursuant to the Sentencing Reform
22 Act of 1984 and the 2016 version of the guidelines, it's the
23 judgement of the Court that the defendant Demetrius Yarborough
24 is hereby sentenced to 84 months of imprisonment. The cost of
25 incarceration fee is waived. Upon release, the defendant

1 shall be placed on supervised release for a term of five
2 years. After his release, the following conditions shall
3 apply:

4 Within 72 hours of release from custody of the Bureau
5 of Prisons, the defendant shall report in person to the
6 probation office in the district where he is released unless
7 his probation officer instructs him differently.

8 The defendant shall comply with the standard
9 conditions of supervised release adopted by the Court.

10 The defendant shall not commit any crimes under
11 federal, state or local law.

12 The defendant shall not possess a firearm, ammunition
13 or other dangerous device.

14 The defendant shall not possess a controlled
15 substance except as prescribed by a physician.

16 The defendant shall cooperate in the collection of a
17 DNA sample as required by the Justice For All Act of 2004.

18 The defendant shall participate in a program for
19 substance abuse, including substance abuse testing, such as
20 urinalysis and other testing, and shall undergo a drug/alcohol
21 evaluation and treatment if substance abuse is indicated by
22 the testing. The probation officer will supervise the details
23 of any testing and treatment, including the selection of a
24 treatment provider and schedule. If inpatient treatment is
25 recommended, however, it must be approved by the Court unless

1 the defendant consents. The defendant is not to leave
2 treatment until completion or as ordered by the Court.

3 While in treatment and after discharge from
4 treatment, the defendant is to abstain from using alcohol.
5 The defendant is required to contribute to the cost of
6 services rendered.

7 I'm imposing this special condition because drug
8 testing is required by the 1994 Crime Control Act, and because
9 of the defendant's prior use and abuse of drugs as detailed in
10 paragraphs 128 through 131 of the presentence report, and the
11 condition -- it -- it serves the statutory sentencing purposes
12 of deterrence, public protection and rehabilitation.

13 The defendant shall submit to a search of his person,
14 property, vehicle, place of residence, or any other property
15 under his control based on reasonable suspicion, and permit
16 confiscation of any evidence or contraband discovered.

17 I'm imposing this condition because the offense of
18 conviction involved drugs which can easily be hidden, and
19 because the condition therefore serves the statutory
20 sentencing purposes of deterrence and public protection.

21 The defendant shall pay to the United States a
22 mandatory special assessment of \$100 due immediately, payment
23 to be made to the Clerk, United States District Court,
24 Attention Finance, United States Courthouse, 2 Niagara Square,
25 Buffalo, New York 14202.

1 If the special assessment is not paid when he's
2 incarcerated, payment shall begin under the Bureau of Prisons
3 Inmate Financial Responsibility Program.

4 So in determining the sentence, I've reviewed all the
5 circumstances of the case, and it is a very involved case, and
6 the defendant's plea. I began my analysis with the
7 guidelines. I've considered the arguments raised by both
8 sides as to what the appropriate sentence should be. And,
9 most importantly, I've considered the factors in 18, United
10 States Code, Section 3553(a) which I stated earlier and I
11 won't repeat now.

12 I'm not imposing a fine. I'm not imposing the costs
13 of imprisonment or the costs of supervised release because I
14 don't believe you have the financial ability to make those
15 payments, and because I think that would have a
16 disproportionate impact on the folks on the outside.

17 So why did I impose the sentence that I did? Well,
18 first of all, selling drugs is a serious crime, especially in
19 the amounts that we're talking about here. You -- you --
20 you've admitted to being involved in the distribution of
21 3 kilograms, about, of cocaine.

22 And even apart from paragraph 24 which is the
23 paragraph that your lawyer raises some issues about, that
24 suggests that you're a midlevel drug dealer at least with
25 respect to the cocaine that you were -- you were dealing in.

1 And that's a -- and that's serious. That's very serious
2 stuff.

3 You also have a very poor criminal history. And, you
4 know, I listened to you talk the talk now, Mr. Yarborough, but
5 you haven't demonstrated the ability to walk the walk even
6 though you -- I'm sure you told yourself you were not going to
7 get involved in this again. I believe you when you tell me
8 that. But you haven't been able to -- to follow through on
9 that.

10 So some of your convictions -- you're fortunate that
11 some of your convictions were too old to count and your
12 criminal history category ended up being substantially less
13 than your lawyer and the government thought when they
14 negotiated the plea agreement.

15 But that doesn't change the fact that you had 15
16 arrests, six criminal convictions that I count, three for
17 felonies, two of those convictions in federal court, two
18 involving weapons or violence, one conviction that you were
19 sentenced to ten years for in federal court. And then there's
20 three violation of probation and parole or supervised release.
21 That's not a good track record.

22 Now, you have a superb lawyer who negotiated a great
23 deal for you, and I actually gave some thought to rejecting
24 the 11(c)(1)(C) plea because it is such a good deal for you,
25 and I gave some very serious thought to sentencing you at the

1 very high end of that, the 90 months.

2 I decided not to do that for a couple reasons:

3 Number 1, because I think that your prior use of drugs is at
4 least in part to blame for your standing here in front of me.
5 And the fact that were clean for a number of years shows that
6 you have it in you to do it.

7 You relapsed, as you said yourself in your remarks.
8 But you can do it if you put your mind to it. And you've got
9 reasons sitting in the back of the courtroom, especially one,
10 your son. That's a good reason to do that.

11 And it's remarkable to me that your son is doing so
12 well because so often our kids do not what we tell them. You
13 said you give good advice. Even though you may not do the
14 right thing, you know how to tell kids what to do and what not
15 to do. And so many of the defendants who appear in front of
16 me, I see that, because -- because the letters or the
17 presentence report or what people say about them is that
18 they're a good family man, a good role model for kids. Some
19 of them coach sports with the kids, and the message that they
20 give the kids when they're coaching the sports, when they're
21 talking to their own kids, is don't do drugs, don't sell
22 drugs. Do what's legal. Live a good life.

23 But the reason that we have this awful vicious circle
24 that we have today is because so many people like you are
25 saying one thing and doing another, and then the kids see, and

1 they say I want to be just like him, he's a great guy, he's my
2 coach, he's my dad, he's my uncle, and I want to be just like
3 him. And they see you doing this stuff, and they end up doing
4 this stuff.

5 And that's why we have generation after generation
6 getting involved in this stuff. It's got to stop. It's got
7 to stop. And the only way it's going to stop is by people
8 like you not only telling them what to do, but showing them.
9 Showing them.

10 And when you get out, you're going to have a lot of
11 years left, and you're going to be able to do that with the
12 rest of your life, and I hope to God you do, and I know that
13 you have it in you to do it.

14 But I think that the nature and the seriousness of
15 the offense, your history and characteristics, the need to
16 promote respect for the law because of the number of
17 violations and crimes that you've committed over and over
18 again, the need to provide for a fair punishment, the need to
19 promote deterrence, the need to protect the public, and
20 importantly the need for consistency in sentencing including
21 the codefendants in your case, those that I've sentenced
22 already and those that I will sentence in the future, and the
23 need for consistency in sentencing with respect to people who
24 have done the sorts of things that you did, all require a
25 sentence toward the higher end of the negotiated range and

1 above the computed guidelines, and that's what -- and that's
2 what I've imposed.

3 And I've also imposing the high end term of
4 supervised release with special conditions. That's intended,
5 number 1, to help you return to society after your
6 incarceration, but it's also going to allow the probation
7 office to monitor your activities to ensure that you don't
8 engage in further illegal activity.

9 I'm going to recommend that your sentence be served
10 and the Bureau of Prisons place you in a facility as close to
11 Western New York as you can be so that your family members can
12 visit you as much as they can.

13 And I'm also going to recommend that you be placed in
14 a facility that has the wherewithal to provide whatever
15 substance treatment that you need. I'm not going to recommend
16 the RDAP program because I just think that there's been too
17 much of a pattern of illegal conduct here to give you the
18 benefit of that. But I am -- I do think, as I said, that
19 your -- your -- your drug use is one of the reasons that
20 you're standing here, and I recognize that -- that addiction
21 is an ugly thing and I think that you ought to get some
22 treatment for that.

23 And I think that if you get treatment on the inside,
24 that will make the transition easier when you get the
25 treatment on the outside so that will at least have you

1 pointed in the right direction and moving in the right
2 direction when you're released.

3 So based on the guidelines, based on the positions of
4 the parties, based on my review of all the facts and
5 circumstances presented to me, I think that the sentence I've
6 imposed is sufficient but not greater than necessary to comply
7 with the purposes of sentencing set forth in 18, United States
8 Code, Section 3553(a).

9 Pursuant to Rule 32(j)(1)(B) of the Federal Rules of
10 Criminal Procedure, I now advise you of your right to appeal.

11 You have a statutory right to appeal your sentence
12 under certain circumstances, particularly if you think the
13 sentence is contrary to law. A defendant may waive those
14 rights as part of a plea agreement.

15 As I think you recognize, Mr. Yarborough, you entered
16 into a plea agreement in which you waived some of your rights
17 to appeal, specifically your rights to appeal a sentence that
18 falls within or is less than the range of imprisonment that
19 was negotiated pursuant to your 11(c)(1)(C) plea.

20 Waivers like these are generally enforceable. If you
21 think the waiver is unenforceable, you can present that theory
22 to an appellate court.

23 If you want to attempt to appeal some issue that you
24 think survives your waiver, you must file a notice of appeal
25 within 14 days.

1 And if you're unable to pay for the cost of an
2 appeal, you may apply for leave to appeal in forma pauperis,
3 that means leave to appeal without paying costs.

4 You have the right to be represented by counsel in
5 any appeal. If you can't afford counsel, you have the right
6 to have counsel appointed to represent you free of charge.

7 The government has a motion?

8 MR. TRIPI: I do, Your Honor. We'd ask to dismiss
9 Count 3 of the second superseding indictment that charged this
10 defendant, dismiss it as to him.

11 THE COURT: Yes. That motion is granted as to this
12 defendant only. Anything further from the government?

13 MR. TRIPI: No, Your Honor. I just had one point of
14 clarification. I assume the \$100 special assessment was
15 ordered? I just --

16 THE COURT: Did I -- did I say it?

17 USPO BLACKMAN: Yes, Your Honor.

18 MR. TRIPI: Sorry. I missed it. That's all. Thank
19 you.

20 THE COURT: Anything further from you, Mr. Addelman?

21 MR. ADDELMAN: Nothing further.

22 THE COURT: Okay. The statement of reasons shall be
23 included in the judgement and shall be provided to the
24 probation office, to the Sentencing Commission and to the
25 Bureau of Prisons.

1 A complete copy of the presentence report shall be
2 provided to the probation office, to the Sentencing Commission
3 and to the Bureau of Prisons.

4 Any other copies of the report and related material
5 shall remain confidential.

6 And if an appeal is taken, counsel on appeal will be
7 given access to the report except, as I said, the
8 recommendations section at the end of the report.

9 A judgment of the conviction should be prepared
10 promptly on the form prescribed for judgments, including
11 sentences under the Sentencing Reform Act.

12 And the defendant is remanded to the custody of the
13 marshals.

14 Good luck to you, sir. I mean, I hope -- I hope that
15 the talk you talk so well now turns into walking the walk, and
16 that you do what you say you want to do, because you've got a
17 unique opportunity to -- to -- once you get out, as I say,
18 when you get out, you're still going to have a lot of years
19 left. You're going to be a lot younger than I am when you get
20 out. And you're going to be able to do some good by telling
21 people look at what happened to me. I made the wrong
22 decisions. Don't just listen to what I'm telling you, look at
23 what happened to me. And have an impact on the lives of those
24 folks, and leave the world a better place because you were in
25 it. And I hope you do that.

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Thanks to everyone.

THE DEFENDANT: I will, Judge.

MR. TRIPI: Thank you, Your Honor. Have a good day.

(Proceedings concluded at 1:08 p.m.)

* * * * *

CERTIFICATION

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Ann M. Sawyer
Ann M. Sawyer, FCRR, RPR, CRR,
NYRCR, NYACR, Notary Public
Official Reporter
U.S.D.C., W.D.N.Y.